



PUBLIC NOTICE

Federal Communications Commission
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DA 17-261

Released: March 16, 2017

**AT&T MOBILITY SPECTRUM LLC AND FIBERTOWER CORPORATION SEEK
FCC CONSENT TO THE TRANSFER OF CONTROL OF
24 GHZ AND 39 GHZ LICENSES**

ULS File Nos. 0007652635 and 0007652637

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: March 30, 2017
Oppositions Due: April 6, 2017
Replies Due: April 13, 2017

I. INTRODUCTION

AT&T Mobility Spectrum LLC (AT&T Mobility), an indirect wholly-owned subsidiary of AT&T Inc. (collectively with AT&T Mobility, AT&T) and FiberTower Corporation (together with AT&T, the Applicants), have filed applications pursuant to Section 310(d) of the Communications Act of 1934, as amended,¹ seeking Commission consent to the transfer of control of 24 GHz and 39 GHz licenses held by FiberTower Corporation's subsidiary FiberTower Spectrum Holdings LLC (collectively with FiberTower Corporation, FiberTower) to AT&T Mobility. Pursuant to a stock purchase agreement, AT&T Mobility would acquire all of the outstanding stock of FiberTower Corporation, after which FiberTower Corporation would become a wholly-owned subsidiary of AT&T Mobility.

The Applicants state that under the proposed transaction, AT&T would be acquiring all of the rights to FiberTower's licenses and authorizations, including licenses that are not currently active in the Commission's Universal Licensing System (ULS) but are subject to a pending remand from the United States Court of Appeals for the District of Columbia Circuit.² According to the Applicants, FiberTower holds interests in a total of 738 24 GHz and 39 GHz licenses, including those licenses subject to the remand.

The Applicants assert that the proposed transaction would serve the public interest by facilitating AT&T's adoption of 5G technology, which, they claim, would benefit consumers by enhancing existing services and enabling the provision of new ones. The Applicants further assert that the proposed transfer of control does not raise spectrum aggregation or competitive concerns.

¹ 47 U.S.C. § 310(d).

² *FiberTower Spectrum Holdings, LLC v. Federal Communications Commission*, 782 F.3d 692 (D.C. Cir. 2015) (Remand Order).

Our preliminary review of the Applicants' spectrum aggregation chart indicates that AT&T would acquire from FiberTower,³ on a population-weighted basis, control of 7.2 megahertz to 796.8 megahertz of 39 GHz spectrum in 3165 counties in all or parts of 727 Cellular Market Areas (CMAs) covering approximately 312 million people, or 99.8 percent of the U.S. population, including Puerto Rico. Post-transaction, AT&T would hold a maximum of 796.8 megahertz of 39 GHz spectrum. In no county would AT&T trigger the spectrum threshold of 1250 megahertz established in the *Spectrum Frontiers R&O*.⁴

In addition, as a result of the proposed transaction, AT&T would acquire from FiberTower control of 1 megahertz to 400 megahertz of 24 GHz spectrum in 365 counties in all or parts of 91 CMAs covering approximately 160 million people or approximately 51 percent of the U.S. population, including Puerto Rico.

II. SECTION 310(d) APPLICATIONS

The applications for the assignment of licenses have the following file numbers:

<u>File No.</u>	<u>Licensee/Assignor</u>	<u>Assignee</u>	<u>Lead Call Sign</u>
0007652635 ⁵	FiberTower Spectrum Holdings LLC	AT&T Mobility Spectrum LLC	WMF846
0007652637	FiberTower Spectrum Holdings LLC	AT&T Mobility Spectrum LLC	WMF850

III. EX PARTE STATUS OF THIS PROCEEDING

Pursuant to Section 1.1200(a) of the Commission's rules,⁶ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under Section 1.1206 of the Commission's rules.⁷

Parties making oral *ex parte* presentations are directed to the Commission's *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁸ More than a one- or two-sentence description of the views and arguments presented is generally required.⁹ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well.¹⁰

IV. GENERAL INFORMATION

The assignment applications have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies.

³ The ranges of spectrum amounts that AT&T potentially could acquire as a result of the proposed transaction include, as a maximum, spectrum associated with FiberTower licenses that are not currently active and remain subject to the *Remand Order*.

⁴ *Use of Spectrum Bands Above 24GHz for Mobile Radio Services*, GN Docket No. 14-177, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8081, para. 184 (2016) (*Spectrum Frontiers R&O*).

⁵ The Applicants designated this application as the lead application.

⁶ 47 C.F.R. § 1.1200(a).

⁷ 47 C.F.R. § 1.1206.

⁸ 47 C.F.R. § 1.1206(b)(1).

⁹ *Id.*

¹⁰ 47 C.F.R. § 1.1206(b).

Interested parties must file petitions to deny no later than **March 30, 2017**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **April 6, 2017**. Replies to such pleadings must be filed no later than **April 13, 2017**. All filings concerning matters referenced in this Public Notice should refer to ULS File Nos. 0007652635 and/or 0007652637, as appropriate.

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹¹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

Under the Commission's current procedures for the submission of filings and other documents,¹² submissions in this matter may be filed electronically through ULS or by hand delivery to the Commission.

- **To file electronically,**¹³ access ULS via the Internet at <http://wireless.fcc.gov/uls/> and click on the "Submit a Pleading" quick link, complete the administrative information, and upload the pleading.
- **To file by paper,** the original and one copy of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by email or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Nancy Zaczek, Broadband Division, Wireless Telecommunications Bureau, at nancy.zaczek@fcc.gov or (202) 418-2643 (facsimile); (2) Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at linda.ray@fcc.gov or (202) 418-2643 (facsimile); and Kate Matraves, Competition and Infrastructure Police Division, Wireless Telecommunications Bureau, at catherine.matraves@fcc.gov or (202) 418-2643 (facsimile).

The applications and any associated documents are available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The applications also are available electronically through ULS, which may be accessed on the Commission's Internet website. To

¹¹ 47 C.F.R. § 1.45(c).

¹² *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009).

¹³ *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov; phone: (202) 418-0530; or TTY: (202) 418-0432.

For further information, contact Linda Ray, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-0257.

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